

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION AT JACKSON**

**SOUTHERN MUTUAL CHURCH
INSURANCE COMPANY,**

Plaintiff,

V.

FAITH DELIVERANCE CENTER,

Defendant.

No. _____

COMPLAINT FOR DECLARATORY JUDGMENT

Comes now the plaintiff, Southern Mutual Church Insurance Company (hereinafter referred to as “Southern Mutual Church”) pursuant to 28 U.S.C. § 2201, Fed. R. Civ. P. 57, and Merrimack Mutual Fire Insurance Company v. Batts, 59 SW3d 142 (Tenn. Ct. App. 2001), perm. app. denied, and would allege the following as its Complaint for Declaratory Judgment against the defendant, Faith Deliverance Center (hereinafter referred to as “Faith Deliverance”):

I. THE PARTIES

1. Southern Mutual Church is an insurance company which, at times relevant to this Complaint, was authorized to transact business in the State of Tennessee. Southern Mutual Church is incorporated under the laws of the State of South Carolina, with its principal place of business located at 201 Greenlawn Drive, Columbia, South Carolina. Southern Mutual Church is thus a citizen and resident of the State of South Carolina for purposes of 28 U.S.C. § 1332.

2. The defendant, Faith Deliverance, is a Tennessee non-profit corporation,

having its principal place of business at 2842 Old Medina Road, Jackson, TN 38305-9436. Faith Deliverance may be served through its registered agent for service of process, Charles Wallace, 2842 Old Medina Road, Jackson, TN 38305-9436. Faith Deliverance is thus a citizen and resident of the State of Tennessee for purposes of 28 U.S.C. § 1332.

II. VENUE AND JURISDICTION

3. As will be more fully set forth below, Southern Mutual Church issued Policy No. SMP 0064697 00 to Faith Deliverance Center, at its address of 2842 Old Medina Road, Jackson, Madison County, TN 38305. A claim against the policy has been submitted to Southern Mutual Church resulting from damage alleged to have occurred on or about May 30 – June 1, 2013. The damage claimed was for alleged damage to property located at 2842 Old Medina Road, Jackson, Madison County, Tennessee. Accordingly, venue is proper in this Court and in this Division pursuant to 28 U.S.C. §§ 1391 and 123.

4. This case is brought pursuant to the Declaratory Judgment Act as codified in 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, as well as Merrimack Mutual Fire Insurance Company v. Batts, 59 SW3d 142 (Tenn. Ct. App. 2001), perm. app. denied. Jurisdiction exists in this Court pursuant to the provisions of 28 U.S.C. § 1332. The amount in controversy exceeds the sum of Seventy-Five Thousand and No/100 Dollars (\$75,000.00), exclusive of interest and costs. More particularly, the amount in controversy is in excess of One Hundred Seventy One Thousand Dollars (\$171,000.00).

5. An actual controversy exists between Southern Church Mutual and the defendant within the meaning of 28 U.S.C. § 2201, and this Honorable Court is vested with

the power in the instant case to declare and adjudicate the rights and legal relationships of Southern Mutual Church and Faith Deliverance with respect to the issues raised herein.

III. FACTS

6. On or about November 4, 2011, Southern Mutual Church issued Policy No. SMP 0064697 00, a religious institution's special multi-peril package policy, to Faith Deliverance Center, at its address of 2842 Old Medina Road, Jackson, Madison County, TN 38305. A true and exact copy of Southern Mutual Church Policy No. SMP 0064697 00 issued to Faith Deliverance is attached hereto as Exhibit 1, and is hereinafter referred to "the policy."

7. Between May 30, 2013, and June 1, 2013, Faith Deliverance claims its building was damaged by storm. The initial claim was based upon wind damage to shingles.

8. Subsequent to June 1, 2013, Faith Deliverance notified Southern Mutual Church that its property had been damaged.

9. On or about June 25, 2013, Southern Mutual Church retained the independent adjusting firm of Tenco Services, Inc. to adjust and investigate the loss. As a result of that adjustment and investigation by Tenco Services, Inc., which also included an engineering analysis by engineer, Martin Ellison, Southern Mutual Church determined the appropriate scope of damages and paid a total of \$43,195.50.

10. Subsequent to this payment, Faith Deliverance invoked the appraisal process set forth by the following provision of the policy:

OTHER CONDITIONS

In addition to the policy 'terms' which are contained in other sections of the

Commercial Property Coverage, the following conditions apply.

1. **Appraisal** – If ‘you’ and ‘we’ do not agree on the amount of the loss or the actual cash value of covered property, either party may demand that these amounts be determined by appraisal.

If either makes a written demand for appraisal, each selects a competent, independent appraiser and notifies the other of the appraiser’s identity within 20 days of receipt of the written demand. The two appraisers then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, ‘you’ or ‘we’ can ask a judge of a court of record in the state where the property is located to select an umpire.

The appraisers then determine and state separately the amount of each loss.

The appraisers also determine the actual cash value of covered property items at the time of the loss, if requested.

A written agreement is binding on all parties. If the appraisers fail to agree within a reasonable time, they submit only their differences to the umpire. Written agreement so itemized and signed by any two of these three is binding on all parties.

Each appraiser is paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire is paid equally by ‘you’ and ‘us’.

If there is an appraisal, ‘we’ retain ‘our’ right to deny the claim.

11. Southern Mutual Church designated Bob Warren as its appraiser. Faith Deliverance designated Toby Johnson as its appraiser. The appraisers agreed on Bill Escue of Dyersburg, Tennessee as umpire.

12. During the conduct of the appraisal process, the umpire refused to meet with either the appraiser for Faith Deliverance or the appraiser for Southern Mutual after being presented with their differences, and refused to allow them even one (1) hour to present their positions with respect to the disagreements that existed under their respective

estimates of loss.

13. In addition, the umpire undertook a coverage and/or causation investigation and assessment, unrelated to a simple determination of the monetary value of the loss. Rather, the umpire went beyond the assessment of the monetary amount of loss, and considered questions of coverage and causation, as well as policy liability, all specifically excluded from the scope of the appraisal panel's authority under Tennessee law. Among other egregious errors, the umpire determined policy coverages, met with the insured's original contractor, Northcross Construction, to reach an agreed scope of repair with that contractor, met with the insured and discussed insured's arguments concerning the manner in which the claim had been adjusted, as well as documented and considered the insured's complaints of claim handling and even alleged discrimination by others involved in the claim process.

14. As a result of this conduct, on or about March 18, 2014, an appraisal award was entered, agreed to by the umpire, William Escue, and the appraiser for Faith Deliverance, Toby Johnson. A copy of the appraisal award is attached hereto as Exhibit 2. The award was submitted to Southern Mutual Church on March 19, 2014.

15. Pursuant to the authority of Merrimack Mutual Fire Insurance Company v. Batts, 59 SW3d 142 (Tenn. Ct. App. 2001), perm. app. denied, Southern Mutual Church has analyzed the appraisal award. Southern Church Mutual has attempted to separate the portions of the award reflecting improper conduct and ultra vires acts on the part of the umpire (agreed to by the appraiser for the insured, Toby Johnson) from those proper determinations of the monetary value of loss. On April 17th, 2014, Southern Mutual Church issued additional payments to Faith Deliverance in the amount of \$108,262.00. Under the

above referenced policy, specifically the provisions of the “loss payment conditions,” this payment was timely. The loss payment provision states as follows:

LOSS PAYMENT

* * *

2. **Your Losses** – ‘We’ adjust all losses with ‘you’. Payment is made to ‘you’ unless another loss payee is named in the policy. A covered loss is payable 30 days after a satisfactory proof of loss is received, and:
 - a. the amount of the loss has been agreed to in writing;
 - b. an appraisal award has been filed with ‘us’; or
 - c. a final judgment has been entered.

16. The total payments of \$151,457.50 represent the payment of actual cash value for the damaged property covered by the above referenced policy of insurance. Southern Mutual Church has not included in its payment the following items:

- A. Items which Southern Mutual Church’s investigation determined were not caused by the wind event of May 30, 2013 – June 1, 2013;
- B. Items awarded under the appraisal award which exceed policy coverage or limitations;
- C. Items awarded under the appraisal award which are excluded from coverage;
- D. Damage that was not caused during the policy period;
- E. Portions of the award for which no insurance claim had been submitted; and

F. Replacement cost amounts awarded by the appraisal when repair and replacement has not yet been completed by the insured.

17. By letter dated April 17, 2014, Southern Mutual Church notified Faith Deliverance it was entitled to claim recoverable depreciation under the portions of the appraisal award that it acknowledged were covered under the policy. Southern Mutual Church also advised Faith Deliverance it was instituting a declaratory judgment action to allow this Court to determine, under the controlling law of the State of Tennessee, issues related to coverage, causation, and extent of policy liability. A copy of the letter dated April 17, 2014 is attached hereto as Exhibit 3.

IV. ISSUES FOR DECLARATORY JUDGMENT

18. Under the policy, losses to the following property are covered, subject to all policy terms, conditions, and exclusions:

BUILDING AND PERSONAL PROPERTY COVERAGE PART

'We' cover direct physical loss to covered property at the premises described on the 'declarations' caused by a covered peril.

PROPERTY COVERED

'We' cover the following types of property for which a 'limit' is shown on the 'declarations'.

BUILDING PROPERTY

This means buildings and structures described on the 'declarations', including:

* * *

BUSINESS PERSONAL PROPERTY

This means 'your' business personal property in the buildings and

structures described on the 'declarations' or in the open (or in vehicles) on or within 500 feet of the described premises....

19. The policy only covered damage occurring during the policy period, as set forth by the following policy condition:

CONDITIONS

* * *

7. **Policy Period – We** cover loss during the policy period shown on the **declarations**.

20. The policy also imposes the following conditions upon coverage for any losses that would otherwise be covered under the policy:

WHAT MUST BE DONE IN CASE OF LOSS

1. **Notice** – In case of a loss, 'you' must:

- a. give 'us' or 'our' agent prompt notice including a description of the property involved ('we' may request written notice);
- b. give notice to the police when the act that causes the loss is a crime; and
- c. give notice to the credit card company if the loss involves a credit card.

2. **Protect Property** – 'You' must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss. 'We' pay the reasonable costs incurred by 'you' for necessary repairs or emergency measures performed solely to protect covered property from further damage by a covered peril if a covered peril has already caused a loss to covered property. However, 'we' do not pay for such repairs or emergency measures performed on property which has not been damaged by a covered peril. This does not increase 'our' 'limit'.

3. **Proof of Loss** – 'You' must send 'us', within 60 days after 'our' request, a signed, sworn proof of loss. This must include the following information:

- a. the time, place, and circumstances of the loss;
- b. other policies of insurance that may cover the loss;
- c. 'your' interest and the interests of all others in the property involved, including all mortgages and liens;
- d. changes in the title or occupancy of the covered property during the policy period;
- e. detailed estimates for repair or replacement of covered property;
- f. available plans and specifications of buildings or structures;
- g. detailed estimates of any covered loss of income and expenses; and
- h. an inventory of damaged and undamaged covered personal property showing in detail the quantity, description, cost, actual cash value, and amount of the loss. 'You' must attach to the inventory copies of all bills, receipts, and related documents that substantiate the inventory. An inventory of undamaged personal property is not required if the total claim for a loss is less than \$10,000 and less than 5% of the total 'limit'.

21. The policy contains substantial limitations and exclusions applicable to coverage, and applicable to portions of the appraisal award, as follows:

PERILS COVERED

When 'Special Perils' is shown on the **declarations**, **we** cover risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

PERILS EXCLUDED

1. **We** do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before , at the same time as, or after the excluded causes or events.

- a. **Ordinance or Law – We** do not cover loss or increased cost caused by enforcement of any code, ordinance, or law regulating the use, construction, or repair of any building or structure; or requiring the demolition of any building or structure including the cost of removing its debris.¹

* * *

2. **We** do not pay for loss if one or more of the following exclusions apply to the loss:

* * *

- c. **Contamination or Deterioration – We** do not cover loss caused by contamination or deterioration including corrosion, decay, fungus, mildew, mold, rot, rust or any quality, fault, or weakness in property that causes it to damage or destroy itself. **We** cover any resulting loss caused by a **specified peril** or breakage of building glass.

* * *

¹ The policy did contain a supplemental coverage involving Ordinance or Law which provided as follows:

13. The following supplemental coverages apply only when a 'limit' is shown on the 'declarations' for Building Property.
- a. **Increased Costs – Ordinance or Law** – Unless otherwise indicated on the 'declarations', 'We' pay up to \$50,000 for each described premises to cover the increased costs of a covered loss, including debris removal expense, resulting from the enforcement of any ordinance, law, or decree that regulates or requires:
- 1) the construction, use, or repair of any property; or
 - 2) the demolition of any property, in part or in whole, not damaged by a covered peril.

The ordinance, law, or decree must be in force at the time of loss.

Under Perils Excluded, Ordinance or Law does not apply to this Supplemental Coverage.

e. **Defects, Errors, and Omissions – We** do not cover loss which results from one or more of the following;

- 1) an act, error, or omission (negligent or not) relating to:
 - a) land use;
 - b) the design, specification, construction, workmanship, installation, or maintenance of property;
 - c) planning, zoning, development, siting, surveying, grading, or compaction; or
 - d) maintenance of property (including land, structures, or improvements);whether on or off the described premises;
- 2) a defect, a weakness, the inadequacy, a fault, or unsoundness in materials used in construction or repair, whether on or off the described premises;
- 3) the cost to make good an error in design; or
- 4) a data processing error or omission in programming or giving improper instructions.

In addition, **we** do not cover loss to Business Personal Property caused by deficiency or defects in design, specifications, materials, or workmanship, or caused by latent or inherent defects.

We cover any resulting loss caused by a covered peril unless the resulting loss itself is excluded.

* * *

I. **Neglect – We** do not cover loss caused by **your** neglect to use all reasonable means to save covered property at and after the time of loss.

We do not cover loss caused by **your** neglect to use all reasonable means to save and preserve covered property when endangered by a covered peril.

* * *

- q. **Temperature/Humidity – We** do not cover loss to personal [property caused by dampness, dryness, or changes in or extremes of temperature. **We** cover any resulting loss caused by **specified perils** or breakage

* * *

- s. **Wear and Tear – We** do not cover loss caused by wear and tear, marring, or scratching. **We** cover any resulting loss caused by a **specified peril** or breakage of building glass.
- t. **Weather – We** do not pay for loss caused by weather conditions if the weather conditions contribute in any way with a cause or event excluded in paragraph 1. above.

We cover any resulting loss caused by a covered peril unless the resulting loss itself is excluded.

* * *

- 8. **Interior of Buildings – We** do not cover loss to the interior of buildings or structures or to personal property in the buildings or structures caused by rain, snow, sleet, ice, sand, or dust, unless:
 - a. entering through openings made by a **specified peril**; or
 - b. the loss is caused by the thawing of snow, sleet, or ice on the building or structure.

22. When covered losses occur to covered property, said losses are to be paid only as follows:

- 1. **Actual Cash Value** – When replacement cost is not shown on the 'declarations' for covered property, the value is based on the actual cash value at the time of the loss (with a deduction for depreciation), except as provided in paragraph 2. through 7. below.

- 2. **Limited Replacement Cost** – When the 'limit' for building Property

satisfies the coinsurance requirement, 'we' pay up to \$3,000 to cover the cost to repair or replace 'your' buildings or structures. This applies only when the total loss does not exceed \$3,000. This provision does not apply to awnings; erected tents; canopies; floor coverings; appliances for refrigerating, ventilating, cooking, dishwashing, or laundering; or outdoor equipment or furniture.

* * *

7. **Replacement Cost** – When replacement cost is shown on the 'declarations' for covered property, the value is based on replacement cost without any deduction for depreciation.

This replacement cost provision does not apply to objects of art, rarity, or antiquity; or paragraphs 3. through 6. above.

The replacement cost is limited to the cost of repair or replacement with similar materials on the same site and used for the same purpose. The payment shall not exceed the amount 'you' spend to repair or replace the damaged or destroyed property.

Except as provided under Limited Replacement Cost, replacement cost valuation does not apply until the damaged or destroyed property is repaired or replaced. 'You' may make a claim for actual cash value before repair or replacement takes place, and later for the replacement cost if 'you' notify 'us' of 'your' intent within 180 days after the loss.

23. The policy did provide the following Extra Expense or Loss of Earnings

Coverage, again subject to policy terms and conditions:

14. The following supplemental coverages apply only when a 'limit' is shown on the 'declarations' for Business Personal Property.

- a. **Extra Expenses or Loss of Earnings** – Unless otherwise indicated on the 'declarations', 'We' pay up to \$10,000 for the necessary extra expenses that 'you' incur in order to continue as nearly as practical 'your' normal business following loss by a covered peril or 'your' loss of earnings following loss by a covered peril. This applies when the damage is to property in the described buildings or structures or in the open (or in vehicles) on or within 500 feet of the described premises.

'We' cover 'your' extra expenses for the time it should reasonably take to resume 'your' normal business, but not longer than the time it should reasonably take to rebuild, repair, or replace the property that has incurred the loss.

'We' do not cover the normal cost of repair, replacement, or restoration of property. 'We' cover expenses in excess of normal that 'you' necessarily incur to reduce loss, but only to the extent they reduce the loss under this coverage.

'We' do not cover the cost of research or other extra expense necessary to reproduce, replace, or restore lost information on lost or damaged valuable papers and records, including those which exist on electronic or magnetic media.

'We' cover expenses in excess of normal that 'you' necessarily incur to reduce loss, but only to the extent that they reduce the loss under this coverage.

'We' cover 'your' actual loss of net income (net profit or loss before income taxes), payroll expense, interest, and other continuing operating expenses normally incurred and earned by 'your' 'business'.

'We' cover only the expenses that are necessary during the 'restoration period'. Consideration is given to continuation of payroll and other expenses to the extent necessary to resume 'your' 'business' with the same quality of service that existed before the loss.

24. The appraisal award contained an award of \$10,000.00 for Loss of Use despite the fact that Faith Deliverance had never submitted a claim to Southern Mutual Church for this coverage, and obviously, Southern Mutual Church had no opportunity to investigate this amount, and certainly had not disagreed with the insured with respect to the coverage at the time of appraisal. Therefore, this amount should never have been considered by the appraisal panel. In addition and/or in the alternative, the insured failed to comply with the policy terms and conditions with respect to this coverage, and

is barred from recovery.

25. Under the appraisal condition, and under the law of the State of Tennessee, Southern Mutual Church has the right to contest issues of coverage, causation, and extent of policy liability. Southern Mutual Church acknowledges that, to the extent this Court determines any of the items referenced above and specifically enumerated below are subject to coverage, the amounts of loss set forth on the appraisal award and estimate are binding as to the amounts of loss only, that being the monetary amount of damages.

26. Southern Mutual Church avers and alleges it is not obligated to pay replacement cost until such time as repairs have been completed. Upon completion of the repairs, Southern Mutual Church is obligated only to pay the amount actually spent to repair or replace the damage.

27. Southern Mutual Church avers and alleges it is not appropriate for the appraisal process to determine questions of coverage, causation, or policy liability.

28. Southern Mutual Church alleges and avers that the following damage as it was claimed by the insured, through the appraisal process, and included on the appraisal award and estimate, are not covered, in that the damage to this property was not caused by the events of May 30, 2013 – June 1, 2013, was not necessary for repair, did not fall within the insuring agreement of the policy, did not occur during the policy period, is excluded by the policy and/or recovery is barred due to the failure of Faith Deliverance to comply with policy terms and conditions:

Exterior**Roof**

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
2.	() HVAC Technician – per hour	8.00 HR	78.84	630.72	(0.00)	630.72
7.	() Roofer – per hour	73.56 HR	56.56	4,160.55	(0.00)	4,160.55

Flat Roof #1

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
21	() HVAC Technician – per hour	4.00 HR	78.84	315.36	(0.00)	315.36

Right Elevation

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
41.	Remove & Replace Aluminum window, picture/fixed 33-40 sf (2 pane w/thermal)	3.00 EA	418.72	1,256.16	(151.24)	1,104.92

Interior**Sanctuary**

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
47.	() Electrician – per hour	18.50 HR	70.80	1,309.80	(0.00)	1,309.80
48.	Remove T&G Pine Ceiling – no finish*	4,929.23 SF	1.45	7,147.38	(0.00)	7,147.38
49.	Replace T&G Pine Ceiling – no finish*	5,915.08 SF	6.58	38,921.23	(4,134.64)	34,786.59
50.	() Finish Carpenter – per hour	24.65 HR	43.23	1,065.62	(0.00)	1,065.62
51.	Stain and finish wood ceiling*	4,929.23 SF	2.50	12,323.08	(184.85)	12,138.23
52.	Apply stain deglosser*	1,304.00 LF	0.21	273.84	(15.65)	258.19
53.	Seal wood ceiling beam w/antimicrobial coating – one coat*	1,304.00 LF	0.88	1,147.52	(115.40)	1,032.12

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
54.	Stain & finish Post/wood beam*	1,304.00 LF	5.83	7,602.32	(291.44)	7,310.88
55.	Painter – per hour	62.33 HR	40.61	2,531.22	(0.00)	2,531.22
56.	Remove & Replace Crown molding – 2 ¼" stain grade	253.18 LF	3.69	934.24	(77.09)	857.15
57.	Stain & finish crown molding	253.18 LF	0.90	227.86	(6.08)	221.78
58.	Mask and cover wall light fixture*	12.00 EA	7.50	90.00	(1.22)	88.78
59.	Mask and cover air register*	10.00 EA	7.50	75.00	(1.02)	73.98
60.	Mask and cover smoke detector*	3.00 EA	7.50	22.50	(0.31)	22.19
61.	Mask and cover door opening – per opening*	9.00 EA	4.68	42.12	(0.92)	41.20
62.	Mark and protect baseboards for paint – plastic, paper, tape (per LF)*	244.26 LF	0.74	180.75	(8.43)	172.32
63.	Seal the walls w/anti-microbial coating – one coat	4,051.30 SF	0.88	3,565.14	(358.54)	3,206.60
64.	Scrape the walls & prep for paint	4,051.30 SF	0.33	1,336.93	(6.08)	1,330.85
65.	Replace Texture drywall – light hand texture	4,051.30 SF	0.28	1,134.36	(30.38)	1,103.98
66.	Paint the walls – two coats	4,051.30 SF	0.56	2,268.73	(109.39)	2,159.34
67.	Painter – per hour	10.40 HR	40.61	422.34	(0.00)	422.34
69.	() Detach & Reset Pews/benches – upholstered*	425.00 LF	6.48	2,754.00	(0.00)	2,754.00
70.	Remove Glue down carpet – heavy traffic – Commercial grade	4,635.80 SF	0.39	1,807.96	(0.00)	1,807.96
71.	() Floor prep (scrape rubber back residue)	4,635.80 SF	0.39	1,807.96	(0.00)	1,807.96
72.	Replace Glue down carpet – heavy traffic – Commercial grade	5,331.18 SF	4.59	24,470.12	(3,382.63)	21,087.49

Stage

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
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	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
75.	() Light fixture – Detach & reset	8.00 EA	38.27	306.16	(0.00)	306.16
76.	Detach & Reset Ceiling fan without light	2.00 EA	114.52	229.04	(0.00)	229.04
77.	() Add on – Ceiling fan down rod – 19"-36"	2.00 EA	6.97	13.94	(0.00)	13.94
78.	() Electrician – per hour	5.00 HR	70.80	354.00	(0.00)	354.00
79.	Remove T&G Pine Ceiling – no finish*	695.77 SF	1.45	1,008.87	(0.00)	1,008.87
80.	Replace T&G Pine Ceiling – no finish*	834.93 SF	6.58	5,493.84	(583.62)	4,910.22
81.	() Finish Carpenter – per hour	3.48 HR	43.23	150.44	(0.00)	150.44
82.	Stain and finish wood ceiling*	695.77 SF	2.50	1,739.43	(26.09)	1,713.34
83.	Apply stain deglosser*	150.00 SF	0.21	31.50	(1.80)	29.70
84.	Seal wood ceiling beam w/anti-microbial coating – one coat*	150.00 LF	0.88	132.00	(13.28)	118.72
85.	Stain & finish Post/wood beam*	150.00 LF	5.83	874.50	(33.53)	840.97
86.	Painter – per hour	8.46 HR	40.61	343.56	(0.00)	343.56
87.	Remove & Replace Crown molding – 2 ¼" stain grade	81.30 LF	3.69	300.00	(24.76)	275.24
88.	Stain & finish crown molding	81.30 LF	0.90	73.17	(1.95)	71.22
89.	Mask and cover air register*	2.00 EA	7.50	15.00	(0.20)	14.80
90.	Mask and protect baseboards for paint – plastic, paper, tape (per LF)*	70.92 LF	0.74	52.48	(2.45)	50.03
91.	Seal the walls w/anti-microbial coating – one coat	1,451.61 SF	0.88	1,277.42	(128.47)	1,148.95
92.	Scrape the walls & prep for paint	1,451.61 SF	0.33	479.03	(2.18)	476.85
93.	Replace Texture drywall – light hand texture	1,451.61 SF	0.28	406.45	(10.89)	395.56
94.	Paint the walls – two coats	1,451.61 SF	0.56	812.90	(39.19)	773.71
95.	Painter – per hour	4.10 HR	40.61	166.50	(0.00)	166.50
96.	Remove Glue down	606.98 SF	0.39	236.72	(0.00)	236.72

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
	carpet – heavy traffic – Commercial grade					
97.	() Floor prep (scrape rubber back residue)	606.98 SF	0.39	236.72	(0.00)	236.72
98.	Replace Glue down carpet – heavy traffic – Commercial grade	698.03 SF	4.59	3,203.96	(442.90)	2,761.06
99.	Replace Step charge for “tucked” carpet installation – High grade	4.00 EA	6.50	26.00	(0.00)	26.00
100.	Remove & Replace Carpet cove (wall wrap) – hemmed – 8”	174.00 LF	6.62	1,151.88	(104.40)	1,047.48
101.	Content Manipulation charge – per hour	12.00 HR	24.76	297.12	(0.00)	297.12

Sanctuary Offset/Sound Rooms

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
102.	Remove & Replace Batt insulation – 10” – R30 – paper faced	159.00 SF	1.42	225.78	(21.94)	203.84
104.	Seal more than the ceiling w/anti-microbial coating – one coat	896.38 SF	0.88	788.81	(79.33)	709.48
105.	Scrape the walls and ceiling & prep for paint	896.38 SF	0.33	295.81	(1.34)	294.47
106.	Replace Texture drywall – light hand texture	896.38 SF	0.28	250.99	(6.72)	244.27
107.	Seal more than the ceiling w/PVA primer – one coat	343.34 SF	0.31	106.44	(2.58)	103.86
108.	Paint the ceiling – one coat	159.00 SF	0.36	57.24	(2.39)	54.85
109.	Paint the walls – two coats	737.39 SF	0.56	412.94	(19.91)	393.03
110.	Mask and protect baseboards for paint – plastic, paper, tape (per LF)*	92.17 LF	0.74	68.21	(3.18)	65.03
111.	Floor protection – cloth – skid resistant, breathable	159.00 SF	0.82	130.38	(0.00)	130.38

Upstairs Sound Room Hallway

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
113	Seal wood ceiling beam w/anti-microbial coating – one coat*	8.00 LF	0.88	7.04	(0.71)	6.33
114	Remove & Replace Batt insulation – 10” – R30 – paper faced	266.56 SF	1.42	378.52	(36.79)	341.73
115	Drywall patch/small repair, ready for paint	2.00 EA	31.36	62.72	(0.69)	62.03
116	Seal the ceiling w/anti-microbial coating – one coat	266.56 SF	0.88	234.57	(23.59)	210.98
117	Scrape the ceiling & prep for paint	266.56 SF	0.33	87.96	(0.40)	87.56
118	Replace Texture drywall – heavy hand texture	266.56 SF	0.47	125.28	(4.80)	120.48
119	Seal the ceiling w/PVA primer – one coat	266.56 SF	0.31	82.63	(2.00)	80.63
120	Paint the ceiling – one coat	266.56 SF	0.36	95.96	(4.00)	91.96
121	Mask wall – plastic, paper, tape (per LF)	107.03 LF	0.63	67.43	(3.69)	63.74
122	Floor protection – cloth – skid resistant, breathable	266.56 SF	0.82	218.58	(0.00)	218.58

Foyer Attic

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
123	Remove T&G Pine Ceiling – no finish*	1,731.39 SF	1.45	2,510.52	(0.00)	2,510.52
124	Replace T&G Pine Ceiling – no finish*	2,077.67 SF	6.58	13,671.07	(1,452.29)	12,218.78
125	() Finish Carpenter – per hour	17.32 HR	43.23	748.74	(0.00)	748.74
126	Seal wood ceiling beam w/anti-microbial coating – one coat*	418.00 LF	0.88	367.84	(36.99)	330.85
127	Seal stud walls w/anti-microbial	1,813.19 SF	0.88	1,595.61	(160.47)	1,435.14

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
	coating – one coat*					
128	Remove & Replace Batt insulation – 4” – R15 – paper faced	453.30 SF	1.12	507.70	(53.04)	454.66
129	() HVAC Technician – per hour	16.00 HR	78.84	1,261.44	(0.00)	1,261.44
130	Seal floor joists w/anti-microbial coating – one coat*	1,679.89 SF	0.88	1,478.30	(148.67)	1,329.63
131	Remove & Replace Blown-in insulation – 12” depth – R30	1,679.89 SF	1.41	2,368.64	(148.67)	2,219.97

Foyer

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
132	Content Manipulation charge – per hour	1.00 HR	24.76	24.76	(0.00)	24.76
133	Mask and cover ceiling light fixture*	9.00 EA	7.50	67.50	(0.92)	66.58
134	Mask and cover air register*	2.00 EA	7.50	15.00	(0.20)	14.80
135	Mask and cover smoke detector*	2.00 EA	7.50	15.00	(0.20)	14.80
136	Mask and cover security camera*	1.00 EA	7.50	7.50	(0.10)	7.40
137	Drywall patch/small repair, ready for paint	2.00 EA	31.36	62.72	(0.69)	62.03
138	Scrape the ceiling & prep for paint	1,344.94 SF	0.33	443.83	(2.02)	441.81
139	Replace Texture drywall – light hand texture	1,344.94 SF	0.28	376.58	(10.09)	366.49
140	Seal the ceiling w/PVA primer – one coat	1,344.94 SF	0.31	416.93	(10.09)	406.84
141	Paint the ceiling – one coat	1,344.94 SF	0.36	484.18	(20.17)	464.01
142	Mask wall – plastic, paper, tape (per LF)	230.94 LF	0.63	145.49	(7.97)	137.52
143	Floor protection – cloth – skid resistant, breathable	1,344.94 SF	0.82	1,102.85	(0.00)	1,102.85

Foyer Hallway

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
144	Mask and cover ceiling light fixture*	7.00 EA	7.50	52.50	(0.71)	51.79
145	Mask and cover smoke detector*	2.00 EA	7.50	15.00	(0.20)	14.80
146	Remove & Replace Batt insulation – 10” – R30 – paper faced	32.00 SF	1.42	45.44	(4.42)	41.02
147	Drywall patch/small repair, ready for paint	2.00 EA	31.36	62.72	(0.69)	62.03
148	Scrape the ceiling & prep for paint	505.42 SF	0.33	166.79	(0.76)	166.03
149	Replace Texture drywall – light hand texture	505.42 SF	0.28	141.52	(3.79)	137.73
150	Seal the ceiling w/PVA primer – one coat	505.42 SF	0.31	156.68	(3.79)	152.89
151	Paint the ceiling – one coat	505.42 SF	0.36	181.95	(7.58)	174.37
152	Mask wall – plastic, paper, tape (per LF)	244.42 LF	0.63	153.98	(8.43)	145.55
153	Floor protection – cloth – skid resistant, breathable	498.86 SF	0.82	409.07	(0.00)	409.07

Conference Room

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
154	Mask and cover ceiling light fixture*	3.00 EA	7.50	22.50	(0.31)	22.19
155	Mask and cover air register*	1.00 EA	7.50	7.50	(0.10)	7.40
156	Remove & Replace Batt insulation – 10” – R30 – unfaced batt	32.00 SF	1.36	43.52	(3.94)	39.58
157	Drywall patch/small repair, ready for paint	2.00 EA	31.36	62.72	(0.69)	62.03
158	Scrape the ceiling & prep for paint	331.91 SF	0.33	109.53	(0.50)	109.03
159	Replace Texture drywall – light hand texture	331.91 SF	0.28	92.93	(2.49)	90.44
160	Seal the ceiling	331.91 SF	0.31	102.89	(2.49)	100.40

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
.	w/PVA primer – one coat					
161	Paint the ceiling – one coat	331.91 SF	0.36	119.49	(4.98)	114.51
162	Paint the walls – one coat	590.27 SF	0.36	212.50	(8.85)	203.65
163	Mask and protect baseboards for paint – plastic, paper, tape (per LF)*	73.78 LF	0.74	54.60	(2.55)	52.05
164	Floor protection – cloth – skid resistant, breathable	331.91 SF	0.82	272.17	(0.00)	272.17
165	Content Manipulation charge – per hour	2.00 HR	24.76	49.52	(0.00)	49.52

Supply Room

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
166	Mask and cover ceiling light fixture*	2.00 EA	7.50	15.00	(0.20)	14.80
167	Remove & Replace Batt insulation – 10” – R30 – unfaced batt	32.00 SF	1.36	43.52	(3.94)	39.58
168	Drywall patch/small repair, ready for paint	1.00 EA	31.36	31.36	(0.35)	31.01
169	Seal the ceiling w/PVA primer – one coat	107.61 SF	0.31	33.36	(0.81)	32.55
170	Paint the ceiling – one coat	107.61 SF	0.36	38.74	(1.61)	37.13
171	Paint the walls – one coat	359.60 SF	0.36	129.46	(5.39)	124.07
172	Mask and protect baseboards for paint – plastic, paper, tape (per LF)*	44.95 LF	0.74	33.26	(1.55)	31.71
173	Floor protection – cloth – skid resistant, breathable	107.61 SF	0.82	88.24	(0.00)	88.24
174	Content Manipulation charge – per hour	1.00 HR	24.76	24.76	(0.00)	24.76

Fellowship Hall

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
175	Remove & Replace Suspended ceiling tile – 2'x4'	24.00 SF	1.22	29.28	(2.74)	26.54
176	Floor protection – cloth – skid resistant, breathable	400.80 SF	0.82	328.66	(0.00)	328.66
177	Content Manipulation charge – per hour	1.00 HR	24.76	24.76	(0.00)	24.76

Womens Restroom

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
178	Remove & Replace Suspended ceiling tile – 2'x4'	32.00 SF	1.22	39.04	(3.65)	35.39
179	Floor protection – cloth – skid resistant, breathable	170.06 SF	0.82	139.45	(0.00)	139.45
180	Content Manipulation charge – per hour	1.00 HR	24.76	24.76	(0.00)	24.76

Kitchen

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
181	Remove & Replace Suspended ceiling tile – 2'x4'	12.00 SF	1.22	14.64	(1.37)	13.27
182	Floor protection – cloth – skid resistant, breathable	366.08 SF	0.82	300.19	(0.00)	300.19
183	Content Manipulation charge – per hour	1.00 HR	24.76	24.76	(0.00)	24.76

Extra Expense or Loss of Earnings

	DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
194	Extra Expenses*	1.00 EA	10,000.00	10,000.00	(0.00)	10,000.00

29. Southern Mutual Church avers and alleges that the damage claimed to these particular items either preexisted the storm of May 30, 2013, or was not caused by the storm of May 30, 2013 and/or was excluded or limited from coverage by operation of policy exclusions, limitations and/or conditions . Accordingly, Southern Mutual Church alleges and avers it is not obligated to pay for damage to these items under the policy.

30. Southern Mutual Church further alleges and avers that Faith Deliverance, upon the discovery of damage, has failed to comply with policy terms and conditions which require it to protect and preserve property and to make claim to the insurance company for items sought and awarded in the appraisal award as soon as possible.

31. Southern Mutual Church avers and alleges that the purpose of the appraisal process is not to resolve liability issues. Rather, under Tennessee law, the purpose of the appraisal process is only to set the monetary amount of loss. This Court is now empowered and authorized to determine liability issues, and to resolve the conflicting questions of causation and coverage which exists under the policy with respect to the above enumerated items of loss.

WHEREFORE, the plaintiff, Southern Mutual Church Insurance Company, prays as follows:

1. That the defendant be required to answer and appear herein;
2. That this Court adjudicate and declare that the damage identified in this Complaint is not covered by the policy and/or is excluded by policy provisions;
3. That this Court adjudicate and declare that damage was caused by the defendant's violation of policy terms and conditions.

4. That this Court adjudicate and declare that the policy does not obligate Southern Mutual Church to pay for amounts in excess of the amounts it has paid to date, and upon completion of repairs within the scope of covered damages, to pay any recoverable depreciation; and

5. For such other and further legal and equitable relief as this Court deems just and proper.

Respectfully submitted,

s/Parks T. Chastain

PARKS T. CHASTAIN

Registration No. 13744

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